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GOOGLE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No. CV 10-03561 WHA

**JOINT STIPULATION AND
[PROPOSED] ORDER RE CASE
SCHEDULE**

Dept.: Courtroom 8, 19th Floor
Judge: Hon. William H. Alsup

STIPULATION

WHEREAS the Court issued a Third Case Management Order on October 6, 2015, ECF No. 1333, setting deadlines for expert reports, opposition reports, Dr. Kearl's Rule 706 Report, motions directed to Dr. Kearl's report, motions directed at the opposing party's expert reports, a final pretrial conference, and a tentative trial date;

WHEREAS the Court, in the Third Case Management Order, invited any objections to the schedule contained in the Third Case Management Order to be filed within seven calendar days of the Third Case Management Order;

WHEREAS, in response to the Court's Third Case Management Order, Plaintiff Oracle America, Inc. ("Oracle") and Defendant Google Inc. ("Google") (collectively, "the parties") conferred and are amenable to the final pretrial conference date, April 27, 2016 at 8:00 a.m., and the tentative trial date, May 9, 2016;

WHEREAS, the parties have agreed that modification of certain other dates set in the Court's Third Case Management Order, identified below, would address certain concerns of the parties regarding the current schedule; and

WHEREAS, given the structure of and burdens provided by the Copyright Act, the parties agree that three rounds of expert reports are appropriate. For example, Google bears the burden of proof in the disgorgement analysis regarding apportionment and deductible expenses; under the current schedule that report would come in the first round, but the parties agree it would make more sense in the second round after Google's expert has had a chance to review Oracle's expert report containing the revenue portion of the disgorgement analysis. A third round of reports will then provide Oracle an appropriate opportunity for rebuttal on apportionment and deductible expenses. Similarly, while Google bears the burden of proof on fair use, Oracle intends to serve expert reports addressing all fair use factors without regard to whether those opinions might technically be characterized as rebuttal, and both parties agree that each should have the opportunity to respond to the other's fair use reports—further necessitating three rounds of reports;

NOW, THEREFORE, the parties AGREE AND STIPULATE to the following

modifications to the current schedule, as reflected in the Court's Second and Third Case

Management Orders:

Event	Current Date	Proposed Date	Google Inc.'s Expert Report Topics	Oracle America, Inc.'s Expert Report Topics
Fact Discovery Cutoff	December 4, 2015	December 16, 2015		
First Round of Party Expert Reports	December 8, 2015	January 8, 2016	Technical Fair Use – All Factors	Technical Actual & Statutory Damages – Revenues Portion of Disgorgement
Second Round of Party Expert Reports	January 8, 2016	February 8, 2016	Rebuttal to Technical Report, if Any Disgorgement – Deductible Expenses & Apportionment	Rebuttal to Technical Report, if Any Fair Use – All Factors (Not Limited to Rebuttal)
Third Round of Party Expert Reports	N/A	February 22, 2016	Rebuttal to Fair Use Report	Rebuttal to Deductible Expenses & Apportionment Report
Deadline for Party Expert Depositions	January 21, 2016	March 6, 2016		
Rule 706 Expert Report	February 8, 2016	March 8, 2016		
Deadline to Depose Rule 706 Expert	February 22, 2016	March 15, 2016		
Party Rebuttals to Rule 706 Report	N/A	March 21, 2016	Rebuttal to Rule 706 Report, if Any	Rebuttal to Rule 706 Report, if Any
Deadline for <i>Daubert</i> Motions	28 Days After Report	Filed by March 23, 2016 (set for hearing at 4/27 PTC)		

1 Dated: October 13, 2015

ORRICK, HERRINGTON & SUTCLIFFE LLP

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3 By: /s/ Annette L. Hurst
ANNETTE L. HURST

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5 Attorneys for Plaintiff
ORACLE AMERICA, INC.

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7 Dated: October 13, 2015

Keker & Van Nest LLP

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9 By: /s/ Robert A. Van Nest
ROBERT A. VAN NEST

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11 Attorneys For Defendant
GOOGLE, INC.

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13 **ATTESTATION OF CONCURRENCE**

14 I, Annette L. Hurst, the ECF User whose ID and password are being used to file this Joint
15 Stipulation and [Proposed] Order re Case Schedule, hereby attest that Robert Van Nest has
16 concurred in this filing.

17 Dated: October 13, 2015

By: /s/ Annette L. Hurst

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21 **[PROPOSED] ORDER**

22 The foregoing stipulation is approved, and IT IS SO ORDERED.

23
24 Date: _____

Honorable William H. Alsup
Judge of the United States District Court